

DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Attorney
DAVID B. NEWDORF, State Bar #172960
JENNIFER E. CHOI, State Bar# 184058
ROBERT A. BONTA, State Bar# 202668
Deputy City Attorneys
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3892
Facsimile: (415) 554-3837
E-Mail: david.newdorf@sfgov.org

Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO,
JUVENILE PROBATION DEPARTMENT, TIM DIESTEL,
OFFICER JACQUELINE SELINGER, OFFICER FRANCES TERRY,
SERGEANT ALBERT LEE, AND SERGEANT STEPHAN THORNE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIE DOE, a minor, through her
mother and Next Friend, MELBA DOE,
on behalf of herself and all others
similarly situated,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, a public entity, the
JUVENILE PROBATION
DEPARTMENT OF THE CITY AND
COUNTY OF SAN FRANCISCO, a
department of the City and County of San
Francisco, TIM DIESTEL, Individually
and as Director of Juvenile Hall, SAN
FRANCISCO POLICE OFFICER
JACQUELINE SELINGER #1302, SAN
FRANCISCO POLICE OFFICER #1770,
SAN FRANCISCO POLICE SERGEANT
LEE #2171, SAN FRANCISCO POLICE
SERGEANT THORNE #2120, OFFICER
NEIL, and DOES 1-20, Jointly and
Severally,

Defendants.

Case No. C04-4914 MJJ

**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS THE COMPLAINT**

Defendants City and County of San Francisco, the Juvenile Probation Department of the City and County of San Francisco, and Tim Diestel moved to dismiss certain claims in the complaint for failure to state a claim under Fed.R.Civ.P. 12(b)(6). The motion was briefed by the parties and heard on April 26, 2005, by the Court, the Hon. Martin J. Jenkins presiding. Defendants were present by and through counsel, Deputy City Attorney David B. Newdorf. Plaintiffs were present by and through counsel John L. Burris and Julia Sherwin. After considering the briefing, the arguments of counsel and the relevant authorities, for the reasons stated on the record, the motion is GRANTED IN PART AND DENIED IN PART as follows:

1. DENIED as to Count I (42 U.S.C. § 1983);
 2. DENIED as to Count II (municipal and supervisory liability under 42 U.S.C. § 1983);
 3. DENIED as to Count III (California Constitutional claims) because the motion as to this claim was withdrawn at the hearing without prejudice to Defendants' right to challenge this claim at a later time;
 4. GRANTED as to Count IV (California Civil Code section 52.1) damages claim based on immunities set forth in Cal. Gov. Code §§ 844.6 and 820.2; with leave to amend.
 5. GRANTED as to Count V (California Penal Code section 4030) without leave to amend;
 6. GRANTED as to Count VI (assault and battery) with respect to supervisors' vicarious liability for damages, based on immunities set forth in Cal. Gov. Code §§ 820.2 and 820.8. with leave to amend. Plaintiff must file amended complaint within 30 days of this order.
- IT IS SO ORDERED.

DATED: 8/16/2005



Hon. Martin M. Jenkins
U.S. District Judge

1 APPROVED AS TO FORM:

2 Dated: May 26, 2005

3 DENNIS J. HERRERA
4 City Attorney

5 By: /s/
6 DAVID B. NEWDORF

7 Attorneys for Defendants
8 CITY AND COUNTY OF SAN FRANCISCO,
9 JUVENILE PROBATION DEPARTMENT, TIM
10 DIESTEL, OFFICER JACQUELINE SELINGER,
11 OFFICER FRANCES TERRY, SERGEANT ALBERT
12 LEE, AND SERGEANT STEPHAN THORNE

13 HADDAD & SHERWIN

14 /s/
15 JULIA SHERWIN
16 Attorneys for Plaintiffs